

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER TRANSPORTATION

In the Matter of Carl Ybarra's  
Application for a Variance From  
Special Transportation Service  
Operating Standards

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on December 29, 2008, at the Office of Administrative Hearings, 600 North Robert Street, Saint Paul, Minnesota. The hearing was held pursuant to a Notice and Order for Hearing, dated November 18, 2008.

Michael A. Sindt, Assistant Attorney General, appeared on behalf of the Minnesota Department of Transportation ("Department"). Joan Willshire, Executive Director, and Kelly Schroepfer appeared on behalf of the Minnesota State Council on Disability. The Respondent, Carl Ybarra, did not appear in person or by counsel. The record closed upon the Respondent's default on December 29, 2008.

**STATEMENT OF ISSUE**

Did the Department lawfully deny the Respondent's request for a variance under Minnesota Rules Part 8840.6300<sup>1</sup>?

The Administrative Law Judge recommends that the Department's decision to deny Respondent's request for a variance be affirmed.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On November 19, 2008, a copy of the Notice and Order for Hearing was delivered via first class and certified mail to the Respondent at his address, 4542 Dupont Avenue North, Minneapolis, Minnesota, 55412, as appears from an Affidavit of Service on file herein.

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<sup>1</sup> Minnesota Statutes are cited to the 2008 edition; Minnesota Rules are cited to the 2007 edition.

2. On November 25, 2008, the Administrative Law Judge sent a letter to the Respondent notifying him of the hearing and providing information. The letter was not returned.

3. On December 8, 2008, the Office of Administrative Hearings received a signed Notice of Intention to Appear at the hearing from the Respondent.

4. The Respondent failed to appear at the hearing, and did not request a continuance or any other relief.

5. The Notice and Order for Hearing contained the following informational warning:

Should a party fails [*sic*] to appear at the hearing, the allegations made by other parties may be taken as true, and the positions of other parties may be adopted without contest by the commissioner.

6. Because Respondent failed to appear, he is in default.

7. Following the scheduled hearing, the Respondent left a telephone message for the Department's counsel that he did not intend to appear.

8. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice and Order for Hearing, and the documents attached thereto, are taken as true and incorporated by reference into these Findings of Fact.<sup>2</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Transportation are authorized to consider the charges against Respondent under Minn. Stat. § 14.50 and Minn. R. pt. 8840.6400.

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

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<sup>2</sup> At the hearing the Department submitted Respondent's current driver's license record. It was marked and added to the record as Exhibit 1.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent was not qualified to operate a special transportation service vehicle because his driving record was not clear of convictions for driving a motor vehicle without a valid current license for the class of vehicle driven, as required by Minn. R. pt. 8840.5900, subp. 11 B.

7. By failing to appear and offer evidence, Respondent failed to demonstrate that he should be granted a variance to operate a special transportation service vehicle, as set forth in Minn. R. pt. 8840.6300.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of Transportation affirm the Department's decision to deny the Respondent's request for a variance pursuant to Minn. R. 8840.6300.

Dated this 7<sup>th</sup> day of January, 2009.

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Default  
A-bjh-122909

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Transportation, Tom Sorel, 395 John Ireland Boulevard, St. Paul, Minnesota 55155, will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded

to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Commissioner Tom Sorel @ (651) 296-3000 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.